
AGREEMENT FOR THE MERGER OF
BAPTIST HEALTH SYSTEMS AND ITS SUBSIDIARIES
WITH RESEARCH HEALTH SERVICES AND ITS SUBSIDIARIES

Dated: February 27, 1991
Closing On: March 1, 1991

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**AGREEMENT FOR THE MERGER OF
BAPTIST HEALTH SYSTEMS
AND ITS SUBSIDIARIES WITH
RESEARCH HEALTH SERVICES AND ITS SUBSIDIARIES**

THIS AGREEMENT is made and entered into on the 27th day of February, 1991, by and between BAPTIST HEALTH SYSTEMS, a Missouri not-for-profit corporation (hereinafter referred to as "BHS"), BAPTIST MEDICAL CENTER, a Missouri not-for-profit corporation (hereinafter referred to as "BMC"), RESEARCH HEALTH SERVICES, a Missouri not-for-profit corporation (hereinafter referred to as "RHS"), and RESEARCH MEDICAL CENTER, a Missouri not-for-profit corporation (hereinafter referred to as "RMC").

- W I T N E S S E T H -

WHEREAS, BHS is exempt from federal income taxation under §501(c)(3) of the Internal Revenue Code of 1986 (the "Code") and serves as the parent holding company for an integrated system of organizations dedicated to the delivery of health care services to the Kansas City metropolitan area and the surrounding region, and which is anchored by BMC which is exempt from income taxation under §501(c)(3) of the Code and which operates a 401-bed acute care hospital located at 6601 Rockhill Road, Kansas City, Missouri;

WHEREAS, RHS is exempt from federal income taxation under §501(c)(3) of the Code and serves as the parent holding company for the Research Health Services System ("RHSS"), which is a comprehensive integrated system of organizations dedicated to the delivery of health care services to the Kansas City metropolitan area and the surrounding region, and which was originally anchored by RMC, which is exempt from income taxation under Section 501(c)(3) of the Code, and which operates a 536-bed acute care hospital located at 2316 East Meyer Boulevard, Kansas City, Missouri;

WHEREAS, BHS and RHS previously signed a Memorandum of Understanding, dated November 6, 1990 (the "Memorandum"), which established principles of agreement for the intended merger of BHS and its subsidiaries with RHS and its subsidiaries;

WHEREAS, the parties now desire to establish their complete agreement regarding the proposed merger of BHS and its subsidiaries with RHS and its subsidiaries;

WHEREAS, the general intent of the parties is to merge the two health care systems into a single system which can better achieve the cost-effective delivery of quality care to the citizens of Kansas City and surrounding areas, in furtherance of the charitable purposes of the respective entities. Among the goals of the transaction will be:

- To provide the opportunity for more efficient use of facilities, equipment, management and support systems;
- To enhance the services provided to the community through product diversification and program coordination;
- To provide the opportunity for the hospitals within the merged system to adapt to change in the health care environment through their collective synergism and management potential; and
- To concurrently seek the dual objectives of continuing to strengthen the individual identities of the hospitals within the merged system as defined by their historical missions and existing institutional policies and principles, while also positioning the emerging system as the recognized leader in health care delivery in the Kansas City area;

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants hereinafter set forth, the parties agree as follows:

ARTICLE I

AGREEMENT TO ESTABLISH NEW HEALTH CARE SYSTEM

Section 1.1 Reorganization of RHS to Establish New Parent of Merged Health Care System. Subject to the terms and conditions hereinafter set forth and only upon satisfaction of the conditions to closing established by this Agreement, on the Closing Date (as defined in Section 5.1 hereinafter), RHS shall amend its Articles of Incorporation and Bylaws as appropriate and necessary to:

(a) Name of Merged Health Care System. Change its corporate name to _____ (hereinafter called "Parent"), the name approved by RHS and BHS as the new name of the merged health care system.

(b) Supported Organizations. Establish BMC as a supported organization of Parent within the meaning of Section 509(a)(3) of the Code.

(c) Governance. Establish governance of the Parent by a self-perpetuating board of directors, subject to the requirements of this paragraph regarding representation of constituent entities on the Parent board. The initial board of the Parent shall consist of forty (40) members with the following constituent representation:

Board of Directors Constituent Representation:

Research Medical Center	17
Baptist Health Systems	9
Lutheran Health Services	7
Lee's Summit Hospital	1
The Rehabilitation Institute	1
Medical Center of Independence	1
Chief Executive Officer/Chief Operating Officer	2
At Large	<u>2</u>
Total	40

The initial board of the Parent shall have an executive committee, consisting of thirteen (13) members and a policy committee consisting of the same members with the following constituent representation:

Executive and Policy Committees Constituent Representation:

Research Medical Center	5
Baptist Health Systems	3
Lutheran Health Services	2
CEO, COO	2
At Large	<u>1</u>
	13

The Chairman of the board, immediate past Chairman of the board (if such individual continues to serve as a board member), and the Vice Chairman of the board of Parent shall serve ex officio with full voting privileges as members of the executive and policy committees of Parent. Such ex officio executive and policy committee members shall also count toward the constituent representation described above. For example, if a BHS representative is the Chairman of the Parent board, an RMC representative is immediate past Chairman and a Lutheran Health Services representative is Vice Chairman, then RMC would be entitled to four (4) additional representatives, BHS two (2) additional representatives and Lutheran Health Services one (1) additional representative on the executive and policy committees of Parent. Attached as EXHIBIT A is a listing of the initial members of the reorganized board of directors and executive and policy committees for Parent and their respective terms of office.

These ratios of representation on the Parent board of directors and the executive and policy committees have been determined by reference to the relative current fund balances of the respective systems. In the future, the size of the Parent Board and executive and policy committees may be reduced in order to achieve more efficient operation of

these governing bodies of Parent. In the process of downsizing, the relative constituent representation shall be preserved. After downsizing, the relative constituent representation shall remain unchanged until such time as other organizations join the merged health care system.

When a new organization is added to the system, a redetermination of the Parent board and executive and policy committees representation will be made, based on fund balances at that time and such other factors as deemed necessary by the Parent board to adequately recognize the contribution the new organization brings to the system. Facts to be considered, in addition to fund balance, would be management strengths, location, future potential, and similar strategic considerations. If the redetermination is based on factors other than relative fund balances, then a majority of the RMC and a majority of the BHS representatives on the Parent board must concur in the redetermination.

(d) Nomination and Election of BHS Representatives on Parent Board and Executive and Policy Committees. Require that nominees for BHS representative vacancies on the Parent Board and executive and policy committees be determined by the vote of a majority of the BHS Board and submitted to the entire Board of Parent for election or rejection. Vacancies arising upon resignation or removal of a BHS representative on the Parent Board and/or executive and policy committees shall be filled for the balance of the unexpired term by the same nominating and election procedure.

(e) Nomination and Election of RMC Representatives on Parent Board and Executive and Policy Committees. Require that nominees for RMC representative vacancies on the Parent Board and executive and policy committees be determined by the vote of a majority of the RMC Board and submitted to the entire Board of Parent for election or rejection. Vacancies arising upon resignation or removal of an RMC representative on the Parent Board and/or executive and policy committees shall be filled for the balance of the unexpired term by the same nominating and election procedure.

Section 1.2 Reorganization of BHS. On or before the Closing Date, BHS intends to reorganize the structure of its health system by taking the following steps in a simultaneous transaction:

(a) BHS will transfer all of its cash and investment securities to BHS Medical Charities, Inc. ("Charities"), except the stock of Associated Business Services, Inc.;

(b) Charities will assume all of BHS's liabilities related to such assets; and

(c) BHS will merge into BMC with BMC surviving the merger.

It is the intention of the parties that all of the provisions of Section 1.1 above which refer to BHS shall apply to BMC following the merger of BHS into BMC.

Section 1.3 Change in Governing Structure of BMC. Subject to the terms and conditions hereinafter set forth and only upon satisfaction of the conditions to closing established by this Agreement, on the Closing Date (as defined in Section 5.1 hereinafter) and following the completion of the BHS reorganization described in Section 1.2 above, BMC shall amend its Articles of Incorporation and/or Bylaws as appropriate and necessary to:

(a) Provide that Parent shall be the sole member of BMC under Revised Statutes of Missouri, Chapter 355, with the authority to elect the Board of Directors of BMC (as specified in Section 1.4 below) and with all other rights and privileges of a sole member of a not-for-profit corporation organized under R.S.Mo. Chapter 355;

(b) Require that upon dissolution of BMC, all of the remaining assets after satisfaction of outstanding debts will be distributed to Parent, or if Parent does not then qualify as an organization exempt from federal income tax under Internal Revenue Code §501(c)(3) or any successor provision thereto, to such other organization which does so qualify as BMC may designate by resolution of the BMC Board;

(c) Provide that the Parent shall establish the merged health care system levels of approval authority applicable to BMC for personnel decisions, short-term borrowing through approved line of credit, capital expenditures, and consulting and legal fees. Currently, for BMC this will mean the levels of approval authority shown on EXHIBIT B attached hereto will be applicable;

(d) Require that annual budgets adopted by the Board of BMC be subject to approval by Parent; and

(e) Establish such other legally appropriate provisions as mutually agreed by the parties which are consistent with the foregoing.

Section 1.4 Election and Removal of BMC Directors. The size of the BMC board of directors and the executive committee will be increased from eleven (11) and five (5) to thirty-four

(34) and seven (7), respectively. The Parent shall appoint three (3) directors and one (1) member of the executive committee following the increase in size of the board and committee. Replacement of these Parent appointees shall continue to be made by the Parent as vacancies occur or terms expire and the Parent appointees shall not be subject to the nomination process described in this subparagraph. The remaining members of the BMC board and the executive committee shall be nominated by the members of the BMC board other than the three (3) Parent appointees. All such nominees to the BMC board shall be subject to election by the Parent as the sole member, but if the Parent shall fail to elect any BMC nominee, the Parent must again obtain nominations from the BMC board for any position which the Parent so fails to fill. The initial members of the expanded BMC board of directors and the executive committee to serve following the closing and their respective terms of office are set forth on EXHIBIT C attached hereto.

The Parent, as sole member of BMC, may remove directors of BMC who are not acting in the best interests of BMC; provided, however, that removal of any non-Parent director will require the concurring vote of a majority of the total membership of the board of BMC. The successor to any director ~~who is removed~~, resigns or otherwise ceases to be a director will be nominated and elected in accordance with the preceding paragraph of this Section 1.4.

Section 1.5 BHS Considerations. Following merger of the two health systems, the following aspects of the operation of BMC will be preserved and maintained by the merged health care system:

- (a) The name of BMC will continue to utilize the term "Baptist";
- (b) A majority of the members of the governing board of BMC will continue to be members of Baptist churches;
- (c) The Christian ministry described in the mission statement of BMC will be continued; and
- (d) Parent will not have any authority to modify the support relationship of BMCF to BMC and all BMC subsidiaries.

Section 1.6 Research Foundation Reorganization. Subject to the terms and conditions hereinafter set forth and only upon satisfaction of the conditions to closing established by this Agreement, on the Closing Date (as defined in Section 5.1 hereinafter), the Research Foundation and the Research Belton Foundation shall amend their Articles of Incorporation and/or Bylaws as appropriate and necessary to modify their governing

structures to change the sole member which is entitled to elect their Boards of Directors from RHS to RMC and to require that their net assets upon dissolution be distributed to RMC, or if RMC does not then qualify as an organization exempt from federal income tax under Code Section 501(c)(3) or any successor provision thereto, to such other organization which does so qualify as they may designate by resolution of their Board of Directors.

Section 1.7 Change in Governing Structure of RMC. Subject to the terms and conditions hereinafter set forth and only upon satisfaction of the conditions to closing established by this Agreement, on the Closing Date (as defined in Section 5.1 hereinafter), RMC shall amend its Articles of Incorporation and/or Bylaws as appropriate and necessary to:

(a) Provide that Parent shall be the sole member of RMC under Revised Statutes of Missouri, Chapter 355, with the authority to elect the Board of Directors of RMC (as specified in Section 1.8 below) and with all other rights and privileges of a sole member of a not-for-profit corporation organized under R.S.Mo. Chapter 355;

(b) Require that upon dissolution of RMC, all of the remaining assets after satisfaction of outstanding debts will be distributed to Parent or, if Parent does not then qualify as an organization exempt from federal income tax under Internal Revenue Code §501(c)(3) or any successor provision thereto, to such other organization which does so qualify as RMC may designate by resolution of the RMC board;

(c) Provide that the Parent shall establish the merged health care system levels of approval authority applicable to RMC for personnel decisions, short-term borrowing through approved line of credit, capital expenditures, and consulting and legal fees. Currently, for RMC this means the levels of approval authority shown on EXHIBIT B attached hereto will continue to be applicable.

(d) Require that annual budgets adopted by the Board of RMC be subject to approval by Parent; and

(e) Establish such other legally appropriate provisions as mutually agreed by the parties which are consistent with the foregoing.

Section 1.8 Election and Removal of RMC Directors. The RMC Board of Directors and the executive committee will be reorganized to provide that the Parent shall appoint three (3) directors and one (1) member of the executive committee following the reorganization of the Board and committee. Replacement of these Parent appointees shall continue to be made by the Parent

as vacancies occur or terms expire and the Parent appointees shall not be subject to the nomination process described in this subparagraph. The remaining members of the RMC Board and the executive committee shall be nominated by the members of the RMC Board other than the three (3) Parent appointees. All such nominees to the RMC Board shall be subject to election by the Parent as the sole member, but if the Parent shall fail to elect any RMC nominee, the Parent must again obtain nominations from the RMC Board for any position which the Parent so fails to fill. The initial members of the reorganized RMC Board of Directors and the executive committee to serve following the closing and their respective terms of office are set forth on EXHIBIT D attached hereto.

The Parent, as sole member of RMC, may remove Directors of RMC who are not acting in the best interest of RMC; provided, however, that removal of any non-Parent Director will require the concurring vote of a majority of the total membership of the Board of RMC. The successor to any Director who is removed, resigns or otherwise ceases to be a Director will be nominated and elected in accordance with the preceding paragraph of this Section 1.8.

Section 1.9 Governance of Other System Subsidiaries.

Subject to the terms and conditions hereinafter set forth and only upon satisfaction of the conditions to closing established by this Agreement, on the Closing Date (as defined in Section 5.1 hereinafter), or as soon thereafter as reasonably practicable, the other subsidiaries of RHS and BMC shall amend their Articles of Incorporation and/or Bylaws as appropriate and necessary to:

(a) Require that upon dissolution of any not-for-profit subsidiary, all of the remaining assets after satisfaction of outstanding debts will be distributed to the sole member organization of the dissolving corporation, or if such member does not then qualify as an organization exempt from federal income tax under Internal Revenue Code §501(c)(3) or any successor provision thereto, to such other organization which does so qualify as may be designated by resolution of the board of directors of the dissolving organization;

(b) Provide that the Parent shall establish the merged health care system levels of approval authority applicable to each such subsidiary for personnel decisions, short-term borrowing through approved line of credit, capital expenditures, and consulting and legal fees;

(c) Require that annual budgets adopted by the Board of any such subsidiary be subject to approval by Parent; and

(d) Establish such other legally appropriate provisions as mutually agreed by BHS and RHS which are consistent with the foregoing.

Section 1.10 Management Organizational Philosophy and Structure. Attached as EXHIBIT E to this Agreement is a document titled "MANAGEMENT ORGANIZATIONAL PHILOSOPHY AND STRUCTURE" which is incorporated by this reference herein. This document, which establishes guidelines for the management of the merged health care system, shall become effective upon the Closing Date.

Section 1.11 The Strategic Plan. Prior to Closing, the parties will develop and mutually agree upon a future strategic and financial plan for the merged health care system, which plan may include: plans for managed care network participation; physician recruitment and contracting strategies; the development, modification, or enhancement of new and existing health care services offered by the merged System; and the identification of cost efficiencies and other savings which the merged health care system could achieve.

Section 1.12 Medical Staff. The Medical Staff of each hospital within the merged health care system is and following Closing shall remain a completely separate, internally autonomous, self-governing Medical Staff responsible only to the Board of Directors of the applicable hospital in accordance with the Medical Staff By-Laws and applicable law. Each system hospital's Medical Staff shall have no direct organizational or official interrelationship with any of the other hospitals within the merged health care system. BHS and RHS recognize and mutually acknowledge that each system hospital shall continue to work independently with its Medical Staff to foster effective, efficient, high quality local patient care.

Section 1.13 Hospital Auxiliaries. The Auxiliary of each hospital within the merged health care system shall remain responsible solely to the applicable hospital, and shall remain completely separate and apart from any other System hospital auxiliary, and shall have no direct organizational or official interrelationship with the auxiliary of any other hospital. BHS and RHS mutually acknowledge that each system hospital shall continue to work independently with its existing Auxiliary as in the past to further broad-based community support for such hospital, for its mission, and for the delivery of high quality patient care in the local community.

ARTICLE II

REPRESENTATIONS

BHS and RHS represent and warrant to each other as follows:

Section 2.1 Organization and Existence. BHS, RHS and their subsidiaries are corporations duly incorporated, validly existing, and in good standing under the laws of the State of Missouri, and are in good standing in all other jurisdictions in which they are required to be qualified to do business as a foreign corporation.

Section 2.2 Authorization, Etc. The execution, delivery and performance by BHS and RHS of this Agreement and all related instruments, agreements, and documents has been duly authorized by them. The execution, delivery and performance by BHS and RHS of these instruments, agreements, and documents is within their corporate power, has been duly authorized by all necessary corporate action, and is not prohibited, restricted, or inhibited by (i) their Articles of Incorporation or By-laws; or (ii) any material law, indenture, contract, instrument or agreement which is binding on either of them, or any of their subsidiaries (other than contracts for which appropriate consents to this transaction have been or prior to Closing will be obtained). In addition, consummation of the transactions described in this Agreement will not result in any material adverse impact upon the business, finances, prospects, relationships, or agreements of BHS, RHS, or any of their subsidiaries.

Section 2.3 Approval of Governmental Bodies. No authorization or approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for the due execution, delivery and performance by BHS or RHS of this Agreement and all related agreements, instruments and documents other than pre-closing notification to the Federal Trade Commission under the Hart-Scott-Rodino Pre-Merger Notification Act, which has been successfully completed.

Section 2.4 Enforceability of Obligations. This Agreement and all related agreements, instruments and documents are, or upon execution at the Closing will be, legal, valid and binding obligations and enforceable against BHS and RHS, as applicable in accordance with their respective terms, except to the extent of applicable bankruptcy, moratorium, insolvency, reorganization and other laws and legal principles affecting or limiting creditors' rights generally.

Section 2.5 Insider Interests. Except as disclosed on SCHEDULE 2.5, no present officer or director of BHS, RHS or any of their subsidiaries (a) owns, directly or indirectly, in whole or in part, any of the properties used in their businesses, (b)

has any other present ongoing business relationship with BHS, RHS or their subsidiaries other than in his or her capacity as an officer or director, or (c) owns, directly or indirectly, in excess of 5% of, or controls, or is an employee, officer, director or partner of, or participant in, or consultant to, any corporation, association, partnership, limited partnership, joint venture, or other entity which is a competitor of BHS, RHS or any of their subsidiaries.

Section 2.6 Financial Statements and Records. The most recent consolidated audited balance sheets of BHS and RHS and the unaudited balance sheets as of all month end reporting periods since the date of the most recent audited statements, and the related consolidated statements of income and retained earnings and changes in financial position for the periods then ended, and the separate balance sheets and related statements of income and retained earnings and changes in financial position for each BHS and RHS subsidiary for their corresponding fiscal year ends and end of month reporting periods, copies of which have been furnished by the parties to each other, fairly present their financial conditions as of such dates and the results of operations for the periods ended on such dates, all in accordance with generally accepted accounting principles which have been applied on a basis consistent with that of the preceding period; and since December 31, 1990, there has been no material adverse change in such conditions or such operations except those described in SCHEDULE 2.6 hereto. The unaudited combined balance sheets for BHS and RHS and the separate statements for each subsidiary as of December 31, 1990, and the unaudited combined statements of operations for the month ended December 31, 1990 and the most recent audited combined balance sheet and combined statements of operations, copies of which have been furnished by the parties to each other, are based upon accurate information and reasonable assumptions. To their best knowledge and belief, except as disclosed in letters to management from independent auditors, all of the books and records of BHS, RHS and their subsidiaries, including but not limited to their stock record books, minute books, By-laws, financial records, and books of account, are accurate and complete in all material respects.

Section 2.7 Compliance with Law and Other Regulations. To their best knowledge and belief, BHS, RHS and their subsidiaries and their activities as presently conducted are substantially in compliance with the requirements of all governmental bodies or agencies having jurisdiction over them, the conduct of their business, the use of their properties and assets, and all premises occupied by them, and, without limiting the foregoing, to their best knowledge and belief BHS, RHS and their subsidiaries have all required licenses, permits, certificates, registrations and authorizations needed for the conduct of their business and the use of their properties and the premises occupied by them. Each party has delivered or made available or

will prior to Closing deliver or make available to the other party true and correct copies of such licenses, permits, certificates, registrations or authorizations, as well as the most recent fire, safety and other inspection reports relating to the businesses operated by them and their subsidiaries. To their best knowledge and belief, there is no act or omission on the part of BHS, RHS or their subsidiaries occurring on or before the date hereof which would subject any of them to the likelihood of any fine or suspension. Except as set forth in SCHEDULE 2.7, BHS, RHS and their subsidiaries have not received any notice, except those complied with by them or waived by the responsible authority, from any federal, state or other governmental authority or agency having jurisdiction over their properties or activities, or any insurance or inspection body, that their operations or any of their properties, facilities, equipment, or business procedures or practices fail to comply with any applicable law, ordinance, regulation, building or zoning ordinance, code, or regulation, or requirement of any public authority or body.

Section 2.8 Litigation. Except as disclosed on SCHEDULE 2.8, there is no pending or, to their best knowledge and belief, threatened action or proceeding to which BHS, RHS or any of their subsidiaries is or would be a party before any court, governmental agency or arbitrator, an adverse determination of which would have a material adverse effect upon any of them.

Section 2.9 Fraud and Abuse. BHS, RHS and their subsidiaries have not received any notice of any investigation nor is any of them the subject of any pending action or proceeding which alleges that any of them have engaged in any activities which are prohibited under federal Medicare statute, 42 U.S.C. §1320a-7b(b), or the regulations promulgated pursuant to such statutes or related state or local statutes or regulations or which are prohibited by rules of professional conduct, including, but not limited to, any notices or pending investigations or proceedings which allege that any of them has knowingly and willfully solicited or received any remuneration (including any kickback, bribe or rebate), directly or indirectly, overtly or covertly, in cash or in kind or offering to pay such remuneration (a) in return for referring an individual to a person for the furnishing of any item or service for which payment may be made in whole or in part by Medicare or any State health program, as defined in 42 U.S.C. §1320a-7, or (b) in return for recommending, purchasing, leasing or ordering any good, facility, service or item for which payment may be made in whole or in part by Medicare or any State health program.

Section 2.10 Existing Indebtedness. To their best knowledge and belief, BHS, RHS and their subsidiaries do not have any material existing indebtedness of any type except (i) that which was set forth on the combined unaudited balance sheets of

BHS, RHS and their subsidiaries as of December 31, 1990, (ii) that which was incurred in the ordinary course of business since such date, and (iii) that which is described on SCHEDULE 2.10 hereto.

Section 2.11 Leases. BHS, RHS and their subsidiaries have no interest, either as lessee or lessor, in any existing material leases of personal or real property which are for a term exceeding one (1) year and involve annual rental payments exceeding One Hundred Thousand Dollars (\$100,000), except as described on SCHEDULE 2.11 hereto, which schedule shall be updated at the time of any material change in the leases described therein.

Section 2.12 Outstanding Guaranties. To their best knowledge and belief, except as disclosed in SCHEDULE 2.12 or on the consolidated audited financial statements, BHS, RHS and their subsidiaries have no guaranties outstanding by which any of them guarantees any indebtedness or any liability of any other person or entity.

Section 2.13 Taxes; Exempt Status. To their best knowledge and belief, except as disclosed on SCHEDULE 2.13, BHS, RHS and their subsidiaries have filed all required federal and other tax returns and paid any taxes due pursuant thereto or pursuant to any assessment received by any of them except such taxes, if any, as are being contested in good faith and as to which adequate reserves have been provided. Except as disclosed on SCHEDULE 2.13, no audit of any federal, state or city income tax returns or other tax returns of BHS, RHS or any of their subsidiaries is in progress, pending, or threatened.

True copies of all federal, state and local income tax, property tax, sales tax, Form 990, and other tax returns, tax examination and audit reports, and statements of deficiencies assessed against or agreed to by BHS, RHS and their subsidiaries since January 1, 1987 have been exchanged by the parties. All such tax returns were based upon accurate information and were prepared in substantial conformity with the applicable tax laws. All deficiencies assessed against BHS, RHS and their subsidiaries have been paid or are being contested in good faith and are appropriately reserved against on the December 31, 1990 financial statements.

Copies of the Internal Revenue Service determination letters confirming that BHS and RHS are organizations exempt from federal income tax under §501(c)(3) of the Code and copies of all other exemption letters issued to them by taxing authorities have been exchanged by the parties. BHS and RHS have not received any notice of any investigation nor is either of them the subject of any pending action or proceeding which alleges that either of them is in violation of or questions its compliance with any of

the requirements of §501(c)(3) of the Code or any other provision of the Code or state law which are conditions to the continued maintenance of their tax exempt status under federal or state law. Except as disclosed on **SCHEDULE 2.13**, no audit of the exempt status of BHS or RHS is in progress, pending, or threatened by any federal, state or local authority.

Section 2.14 Employee Plans; Labor Matters. BHS, RHS and their subsidiaries have, and at the Closing Date will have, no "employee pension benefit plan" as that phrase is defined in Section 3(2) of ERISA (herein called a "Plan"), except such defined contribution or benefit pension plans as meet the requirements of ERISA and the Code (herein called "Pension Plans"). BHS, RHS and their subsidiaries have, and at the Closing Date will have, no obligations, contingent or otherwise, written or oral, which are not cancelable upon thirty (30) days notice, under any: (a) collective bargaining agreement; (b) nonqualified pension or retirement plan, bonus plan, stock option or purchase plan, or other contract or nonterminable agreement benefiting employees generally; (c) group insurance, group hospitalization; or (d) other group employee benefit plan other than those listed in **SCHEDULE 2.14**, true and correct copies, certificates or descriptions of which have been exchanged by the parties. BHS, RHS and their subsidiaries have performed all obligations required to be performed under the Pension Plans and all such other group agreements and plans and are not in default or in arrears in any material respect under any of the terms thereof. Except as set forth in **SCHEDULE 2.14**, BHS, RHS and their subsidiaries have not within the past three (3) years engaged in discussions with respect to any collective bargaining agreement and have not been the subject of any election with respect to the unionization of any of their employees, nor are any such discussions or elections now pending, contemplated by them, or threatened by others. BHS, RHS and their subsidiaries have substantially complied with all applicable federal and state laws relating to the employment of labor, including but not limited to the provisions thereof relative to wages, hours and collective bargaining, and are not liable for any arrears of wages for failure to comply with any of the foregoing, which liability or failure to comply would have a material adverse effect upon any of them. BHS, RHS and their subsidiaries have not received any notice of noncompliance with any of the foregoing.

Section 2.15 Title to Real and Personal Property. BHS, RHS and their subsidiaries have, and at the Closing will have, good and marketable title to all property and assets purported to be owned by them, subject only to those options, rights of first refusal, liens, restrictions, encumbrances, pledges, and security interests which are matters of public record. Except as disclosed on **SCHEDULE 2.15**, the property and assets of BHS, RHS and their subsidiaries are in reasonably good condition and

repair in all material respects, free of significant defects of materials or workmanship, and are without the present need for any major (i.e.: in excess of \$100,000 in any one instance or more than \$100,000 above the current fiscal year budget in the aggregate) replacement equipment, repairs, construction, or reconditions being required by any of them.

Section 2.16 Contracts and Commitments. Except as set forth or described in SCHEDULE 2.16 hereto, BHS, RHS and their subsidiaries do not have and at the Closing Date will not have any material contracts or agreements which are for a term exceeding two (2) years and involving annual expenditures in excess of Two Hundred Fifty Thousand Dollars (\$250,000), including, but without limiting the generality of the foregoing, any material commitments or obligations, contingent or otherwise, under any contract or agreement (i) for the purchase or sale of inventory, or (ii) for the purchase or sale of supplies, services or other items, or (iii) for the purchase or sale of any equipment or machinery, or (iv) for the performance of services for others; and at the Closing Date BHS, RHS and their subsidiaries will not have any such commitment or obligation except those incurred in the ordinary course of business, those listed in the aforesaid SCHEDULE 2.16, or those disclosed to and discussed with the other party to this Agreement. To their knowledge, BHS, RHS and their subsidiaries have performed all obligations required to be performed under any such contract or agreement and are not in default or in arrears in any material respect under the terms thereof. Except as disclosed on SCHEDULE 2.16, none of them has received notice of any default or failure of performance under any such contract or agreement, which default or failure has not been waived or cured. Each such contract or agreement is in full force and effect on the date hereof and true and correct copies of each thereof have been or will be, prior to Closing, made available by each party to the other.

Section 2.17 Accounts Receivable; Reserves. The accounts receivable of BHS, RHS and their subsidiaries reflected on the December 31, 1990 financial statements are, and those existing on the Closing Date (i) shall be, comprised of valid claims in the full amount thereof against the debtor charged therewith on their books; (ii) except as disclosed on such financial statements or otherwise disclosed, shall all have been acquired in the ordinary course of business; (iii) shall be subject to no known defenses, set-offs or counterclaims; and (iv) shall be collectible in full, less the reserves for bad debts and third party payor adjustments reflected on the December 31, 1990 balance sheets and on the balance sheets to be exchanged by the parties between the date of this Agreement and the Closing Date.

Section 2.18 Insurance Coverages. BHS, RHS and their subsidiaries maintain in full force and effect, with no premium arrearages, insurance policies with the companies in the amounts and providing the coverages set forth in SCHEDULE 2.18. True and correct copies of all such policies, any endorsements thereto, and of all insurance facility inspection reports have been or will be, prior to Closing, made available by the parties to each other.

Section 2.19 Bank Accounts. The parties have exchanged true and complete lists as of December 31, 1990 of all accounts of them and their subsidiaries with banks, trust companies, savings and loan associations, brokerage houses, and money managers, and the names of all persons authorized to draw thereon or to have access thereto.

Section 2.20 Trademarks, Trade Names, Etc. SCHEDULE 2.20 hereto sets forth all, if any, of the trademarks, trade names, service marks, patents, copyrights, registrations of BHS, RHS and their subsidiaries, or applications with respect thereto, and licenses or rights under the same presently owned, used or intended to be acquired or used by any of them, and to the extent set forth in SCHEDULE 2.20, the same have been duly registered in such offices as are indicated thereon.

Section 2.21 Accuracy of Information. To their best knowledge and belief, the financial materials, schedules and other materials supplied and to be supplied by each party to the other pursuant to this Agreement are and shall be substantially complete and correct in all material respects, include and shall include all material facts required to describe fairly and accurately the business and properties of each party and their subsidiaries, and do not and shall not omit any material fact necessary to make such materials not misleading.

Section 2.22 Reports and Returns. To their best knowledge and belief, except as described on Schedule 2.13, BHS, RHS and their subsidiaries have timely filed all reports and returns heretofore required by federal, state or municipal authorities and all reports and returns to the various governmental authorities which control, directly or indirectly, any of their activities. All such reports and returns are based upon accurate information and reasonable assumptions and were prepared and filed in the manner prescribed by applicable law and/or regulation.

Section 2.23 Additional Documents Supplied. Each party has delivered or made available, or will deliver or make available before Closing, to the other true and exact copies of (i) all cost reports its subsidiaries have filed with Medicare and Medicaid for the last three (3) years, as well as all correspondence and other documents relating to any disputes

and/or settlements with Medicare or Medicaid within the last three (3) years, and (ii) all appraisal reports, surveys or other documents which evaluate or describe any of the properties and assets of any of them within the last three (3) years, and (iii) all reports they and their predecessors in interest have filed with the U.S. Department of Health and Human Services, the U.S. Drug Enforcement Administration, Missouri Division of Health, and Missouri Health Facilities Review Committee, as well as all correspondence and other documents relating to any audits, disputes, and/or settlements with any of these governmental agencies within the last three (3) years.

Section 2.24 Subsidiaries, Partnerships and Investments. Except as disclosed in SCHEDULE 2.24 hereto, (i) BHS, RHS and their subsidiaries do not own capital stock or other securities of, or any equity interests or investment in, any nonpublicly traded corporation, partnership, joint venture, or other entity; (ii) all such equity interests in each of the corporations, partnerships, joint ventures and other entities named in such SCHEDULE 2.24 are owned free and clear of all mortgages, liens, pledges, charges, security interests, encumbrances, options, rights of third parties, charges and restrictions whatsoever (collectively "Liens") other than those disclosed on SCHEDULE 2.24, all of which would not materially adversely effect the operations of BHS, RHS, their subsidiaries or such entities;

Section 2.25 Stock and Records. To their best knowledge and belief, all of the outstanding capital stock issued by any subsidiaries identified on SCHEDULE 2.24 was and is properly issued, and all of their books and records, including but not limited to their stock record books, minute books, By-Laws and books of account, are accurate and complete in all material respects.

Section 2.26 Hazardous Substances. To their best knowledge and belief, all real property, buildings and other improvements thereon owned by BHS, RHS or their subsidiaries (for purposes of this Section 2.26, collectively referred to as the "property") have never been and are not currently used as a site for the storage or disposal of solid waste, infectious waste, petroleum products, pesticides, PCBs, asbestos, toxic substances or materials or hazardous substances or materials (herein collectively referred to as "hazardous substances"), except for (a) building materials which contain asbestos which is either nonfriable or has been contained to the extent required by applicable laws; and (b) the temporary storage of any such materials pending proper disposal. Except for the generation of hazardous substances, which have been and are being disposed of in compliance with applicable environmental laws, the property has never been and is not currently used as a site for the generation of hazardous substances. Except as disclosed on SCHEDULE 2.26, no underground fuel storage tanks have ever been

